

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TODD JAROD FUNDERMANN,

Defendant.

No. 08-CR-4033-DEO

ORDER

I. INTRODUCTION AND BACKGROUND

This matter is before the Court pursuant to "Report and Recommendation On Motion To Suppress" (Docket No. 18, 05-08-2008), which states in part:

The defendant Todd Jarod Fundermann is charged in this case with possession of a firearm while he was the subject of a domestic restraining order as provided by 18 U.S.C. § 922(g)(8). See Doc. No. 1. This matter is before the court on Fundermann's motion to suppress evidence obtained during and as the result of a traffic stop that occurred on February 25, 2008. Doc. No. 8. The plaintiff (the "Government") has resisted the motion. Doc. Nos. 14 & 15. The court held an evidentiary hearing on the motion on May 7, 2008, at which Assistant U.S. Attorney Kevin Fletcher appeared on behalf of the Government, and Fundermann appeared in person with his attorney, Alexander Esteves.

The Report and Recommendation goes on to state the details of the hearing held, including what testimony was offered and what exhibits were admitted. Further, the Report and Recommendation sets out pertinent facts relating to Fundermann's motion. These portions of the Report and Recommendation will not be repeated, but are referenced as if fully set out herein. (Docket No. 18, p. 1-7).

II. ANALYSIS

A. Standard of Review

Pursuant to statute, this Court's standard of review for a magistrate judge's Report and Recommendation is as follows:

A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate [judge].

28 U.S.C. § 636(b)(1). Similarly, Federal Rule of Civil Procedure 72(b) provides for review of a magistrate judge's Report and Recommendation on dispositive motions and prisoner petitions, where objections are made as follows:

The district judge to whom the case is assigned shall make a de novo determination upon the record, or after additional

evidence, of any portion of the magistrate judge's disposition to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the recommendation decision, receive further evidence, or recommit the matter to the magistrate judge with instructions.

FED. R. CIV. P. 72(b).

III. CONCLUSION

Chief United States Magistrate Judge Paul A. Zoss ruled in the Report and Recommendation:

The court finds the traffic stop and subsequent search of the vehicle were lawful. . . Fundermann has failed to show any legal basis for suppression of the evidence found at the scene of the traffic stop or seized during execution of the search warrant at Fundermann's residence, including the firearm described in the Indictment, and the motion to suppress should be denied.

Chief U.S. Magistrate Zoss ruled that any objections to the Report and Recommendation must be filed by May 15, 2008, and that responses to the objections must be filed by May 20, 2008. In this case, no objections have been filed, and it appears to the Court upon review of Chief Magistrate Judge Zoss's findings and conclusions that there are no grounds to reject or modify them.

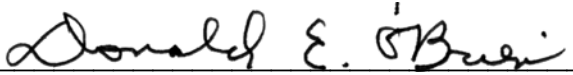
Because trial in this matter is scheduled for Monday, June 2, 2008, the Court feels a continuance of that trial date is appropriate given the outcome of the motion to suppress and the facts surrounding this case.

IT IS THEREFORE HEREBY ORDERED that this Court accepts Chief Magistrate Judge Zoss's Report and Recommendation (Docket No. 18), and the defendant's motion to suppress (Docket No. 8) is hereby **denied**.

IT IS FURTHER HEREBY ORDERED that the jury trial scheduled for Monday, June 2, 2008, is hereby **continued** and shall now take place on **July 7, 2008, beginning at 9:00 a.m.** **Counsel for the parties shall be present in the undersigned's chambers at 8:30 a.m. on each day of trial.**

For the reasons set forth above, the time from the date of the defendant's motion to suppress (Docket No. 8) to the trial date is excluded for purposes of speedy trial calculations pursuant to 18 U.S.C. § 3161(h)(1)(F).

IT IS SO ORDERED this 30th day of May, 2008.


Donald E. O'Brien, Senior Judge
United States District Court
Northern District of Iowa